

Rasmussen, Anna G (NSH - X68619)

From: Farmer, Jonathan <jfarmer@spencerfane.com>
Sent: Monday, August 5, 2024 10:19 AM
To: Longnecker, Joy; Phillips, Taylor (USATNM); Cynthia A. Sherwood; Yarbrough, Ed
Cc: Ben Rose; Taddei, John (CRM); Ellison, Blake (CRM); Trompeter, Wells (NSH - X68759); Bridgers, David (NSH - X68529)
Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

Taylor – I agree with the below email on all points.

Jonathan P. Farmer Partner
Spencer Fane Bone McAllester

511 Union Street, Suite 1000 | Nashville, TN 37219
O 615.238.6309
jfarmer@spencerfane.com | spencerfane.com

From: Longnecker, Joy <Joy.Longnecker@btlaw.com>
Sent: Monday, August 5, 2024 9:59 AM
To: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Farmer, Jonathan <jfarmer@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>
Cc: Ben Rose <ben@rosefirm.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Wells.Trompeter@hklaw.com; David.Bridgers@hklaw.com; Longnecker, Joy <Joy.Longnecker@btlaw.com>
Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

[Warning] This E-mail came from an External sender. Please do not open links or attachments unless you are sure it is trusted.

Taylor,
Thanks for your email. We are aware of the protective order and will re-confirm that we are not reviewing Ms. Smith's phone data, as noted in our prior emails.

That said, we do not have sufficient information about the circumstances surrounding the initial production of Ms. Smith's phone or the privilege claim to evaluate whether any disclosure was "inadvertent." We do know that the government disclosed the phone's contents in 2022, and that the government did not claim anything about the disclosure was inadvertent until last week, 2 years later and just over 3 months from trial.

It seems that the basis for asserting inadvertence is Ms. Smith's counsel's recent assertion that privileged materials exist on the phone. However, in light of what we understand to be a lengthy period of time between the disclosure of the phone's contents and the assertions of privilege, the delay in raising any issue promptly upon discovery of the disclosure, along with the fact that (as of this email) Ms. Smith's lawyers have yet to take any action to protect the privilege other than sending an email last week, it does appear that privilege has been waived. And if privilege is waived, then it is unclear what the government's grounds for claiming inadvertent disclosure would be.

Joy Longnecker | Partner
Direct: 615-621-6012
Mobile: 615-925-9506

From: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>
Sent: Thursday, August 1, 2024 4:30 PM
To: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Farmer, Jonathan <jfarmer@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>
Cc: Ben Rose <ben@rosefirm.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Wells.Trompeter@hklaw.com; David.Bridgers@hklaw.com
Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

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Joy, Cynthia, Ed, and John.

Pursuant to paragraph 4 of the protective order (D.E. #23), please return your copies of the Cellebrite of Ms. Smith's phone to the government. In light of your position that privilege may have been waived, we will preserve those copies until there is either a judicial determination of waiver or you approve of our returning the unfiltered Cellebrites to Ms. Smith's counsel.

Best,
-Taylor

Taylor J. Phillips
Tel (615) 736-2116

From: David.Bridgers@hklaw.com <David.Bridgers@hklaw.com>
Sent: Thursday, August 1, 2024 8:58 AM
To: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Farmer, Jonathan <jfarmer@spencerfane.com>
Cc: Phillips, Taylor (USATNM) <TPhillips@usa.doj.gov>; Ben Rose <ben@rosefirm.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Wells.Trompeter@hklaw.com
Subject: Re: [EXTERNAL] Re: Robin Smith Phone - Privilege

Thanks Joy.

David Bridgers | Holland & Knight
Partner
Holland & Knight LLP
511 Union Street, Suite 2700 | Nashville, Tennessee 37219
Phone 615.850.8529 | Mobile 615.668.6396
david.bridgers@hklaw.com | www.hklaw.com

From: Longnecker, Joy <Joy.Longnecker@btlaw.com>
Sent: Thursday, August 1, 2024 8:53:37 AM
To: Bridgers, David (NSH - X68529) <David.Bridgers@hklaw.com>; Farmer, Jonathan <jfarmer@spencerfane.com>
Cc: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Trompeter, Wells (NSH - X68759)

<Wells.Trompeter@hklaw.com>

Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

Mr. Cothren also has no opposition to a limited intervention by Ms. Smith to ascertain privilege/waiver issues.

Joy Longnecker | Partner

Direct: 615-621-6012

Mobile: 615-925-9506



From: David.Bridgers@hklaw.com <David.Bridgers@hklaw.com>

Sent: Thursday, August 1, 2024 8:16 AM

To: Farmer, Jonathan <jfarmer@spencerfane.com>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Wells.Trompeter@hklaw.com

Subject: Re: [EXTERNAL] Re: Robin Smith Phone - Privilege

Caution: This email originated from outside the Firm.

Thanks Jonathan.

David Bridgers | **Holland & Knight**

Partner

Holland & Knight LLP

511 Union Street, Suite 2700 | Nashville, Tennessee 37219

Phone 615.850.8529 | Mobile 615.668.6396

david.bridgers@hklaw.com | www.hklaw.com

From: Farmer, Jonathan <jfarmer@spencerfane.com>

Sent: Thursday, August 1, 2024 8:11:04 AM

To: Bridgers, David (NSH - X68529) <David.Bridgers@hklaw.com>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Trompeter, Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>

Subject: Re: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

David - no opposition to limited intervention to ascertain privilege/waiver issues.

Jonathan Farmer

Spencer Fane Bone McAllester

511 Union St., Suite 1000

Nashville, TN

615-238-6309 (o)

On Aug 1, 2024, at 7:43 AM, David.Bridgers@hklaw.com wrote:

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Jonathan-What is your position on intervention?

David Bridgers | Holland & Knight

Partner

Holland & Knight LLP

511 Union Street, Suite 2700 | Nashville, Tennessee 37219

Phone 615.850.8529 | Mobile 615.668.6396

david.bridgers@hklaw.com | www.hklaw.com

From: Farmer, Jonathan <jfarmer@spencerfane.com>

Sent: Thursday, August 1, 2024 7:38:12 AM

To: Bridgers, David (NSH - X68529) <David.Bridgers@hklaw.com>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Phillips, Taylor (USATNM)

<Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>; Yarbrough, Ed

<EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Taddei,

John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Trompeter,

Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>

Subject: Re: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

We have the same position.

Jonathan Farmer

Spencer Fane Bone McAllester

511 Union St., Suite 1000

Nashville, TN

615-238-6309 (o)

615-498-5299 (c)

On Aug 1, 2024, at 7:34 AM, David.Bridgers@hklaw.com wrote:

[Warning] This E-mail came from an External sender. Please do not open links or attachments unless you are sure it is trusted.

Joy-Thanks for responding. Ed, we would appreciate a response at your earliest convenience so that we can accurately represent your position to the Court.

Related to that, I would appreciate all parties letting us know your position on our intervening in your case for the purpose of protecting our client's privilege. Please let us know today if at all possible.

Thanks,

David

David Bridgers | Holland & Knight

Partner

Holland & Knight LLP

511 Union Street, Suite 2700 | Nashville, Tennessee 37219

Phone 615.850.8529 | Mobile 615.668.6396

david.bridgers@hklaw.com | www.hklaw.com

From: Longnecker, Joy <Joy.Longnecker@btlaw.com>

Sent: Wednesday, July 31, 2024 7:05:19 PM

To: Bridgers, David (NSH - X68529) <David.Bridgers@hklaw.com>; Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>

Cc: Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Trompeter, Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>

Subject: Re: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

Hi David,

The defendants are investigating waiver and cannot, at present, agree to return the image of Ms. Smith's phone that the government produced to us. We will be in touch when we've run this to ground.

Get [Outlook for iOS](#)

From: David.Bridgers@hklaw.com <David.Bridgers@hklaw.com>

Sent: Wednesday, July 31, 2024 1:20:41 PM

To: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Ben Rose <ben@rosefirm.com>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>; Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; Wells.Trompeter@hklaw.com <Wells.Trompeter@hklaw.com>

Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

Caution: This email originated from outside the Firm.

Thanks Taylor.

Joy, Cindy, Ed, and Jonathan-On behalf of Robin Smith, the privilege holder, we are seeking confirmation that upon receipt of the new image that does not contain privileged material, you all will return the image previously produced to you without maintaining copies of the image or any privileged material that might be found on the image and that you will not attempt to use or disseminate any of the privileged material. We would appreciate your response at your earliest convenience so we can determine what else, if anything, we might need to do in order to protect our client's privilege.

Thanks,

David

David Bridgers | Holland & Knight

Partner

Holland & Knight LLP

511 Union Street, Suite 2700 | Nashville, Tennessee 37219

Phone 615.850.8529 | Mobile 615.668.6396

david.bridgers@hklaw.com | www.hklaw.com

From: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>

Sent: Wednesday, July 31, 2024 11:15 AM

To: Ben Rose <ben@rosefirm.com>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Yarbrough, Ed

<EYarbrough@spencerfane.com>; Cynthia A. Sherwood

<cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>;

Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM)

<Blake.Ellison@usdoj.gov>; Bridgers, David (NSH - X68529)

<David.Bridgers@hklaw.com>; Trompeter, Wells (NSH - X68759)

<Wells.Trompeter@hklaw.com>

Subject: RE: [EXTERNAL] Re: Robin Smith Phone - Privilege

[External email]

Thanks – apologies for the typo.

Taylor J. Phillips

Tel (615) 736-2116

From: Ben Rose <ben@rosefirm.com>

Sent: Wednesday, July 31, 2024 11:10 AM

To: Phillips, Taylor (USATNM) <TPhillips@usa.doj.gov>

Cc: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Yarbrough, Ed

<EYarbrough@spencerfane.com>; Cynthia A. Sherwood

<cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>;

Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM)

<Blake.Ellison@usdoj.gov>; Bridgers, David (NSH - X68529)

<David.Bridgers@hklaw.com>; Trompeter, Wells (NSH - X68759)

<Wells.Trompeter@hklaw.com>

Subject: [EXTERNAL] Re: Robin Smith Phone - Privilege

Election.

BMR

On Wed, Jul 31, 2024, 11:07 AM Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov> wrote:

All,

Thank you again for stopping your review. The FBI is producing a new Cellebrite of Ms. Smith's phone and, after consultation with Ms. Smith's counsel, we anticipate that an FBI technical employee will run the following terms against it:

- "Ben Rose"
- ben@bmrfirm.com
- ben@rosearters.com
- "Josh Arters"
- josh@bmrfirm.com
- josh@rosearters.com
- "Hamilton county electric" (Mr. Rose represented Ms. Smith in litigation styled *Tennessee Democratic Party v. Hamilton County Electric Commission, et al.*)

They will then segregate documents which hit on any of those terms and provide a Cellebrite report with the remaining documents to us. We'll then produce it to you—hopefully next week.

Best regards,

-Taylor

Taylor J. Phillips

Tel (615) 736-2116

From: Longnecker, Joy <Joy.Longnecker@btlaw.com>

Sent: Friday, July 26, 2024 4:32 PM

To: Yarbrough, Ed <EYarbrough@spencerfane.com>; Phillips, Taylor (USATNM) <TPhillips@usa.doj.gov>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>

Cc: Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; ben@rosefirm.com; David.Bridgers@hklaw.com; Trompeter, Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>; Longnecker, Joy <Joy.Longnecker@btlaw.com>

Subject: [EXTERNAL] RE: Robin Smith Phone - Privilege

Counsel for Mr. Cothren have stopped their review of Ms. Smith's phone, as well.

Joy Longnecker | Partner

Direct: 615-621-6012

Mobile: 615-925-9506

From: Yarbrough, Ed <EYarbrough@spencerfane.com>
Sent: Friday, July 26, 2024 4:15 PM
To: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>; Longnecker, Joy <Joy.Longnecker@btlaw.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Farmer, Jonathan <jfarmer@spencerfane.com>
Cc: Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; ben@rosefirm.com; David.Bridgers@hklaw.com; Trompeter, Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>
Subject: [EXTERNAL] RE: Robin Smith Phone - Privilege

Caution: This email originated from outside the Firm.

Attorneys for Mr. Casada have stopped reviewing Ms. Smith's phone in accordance with your request.

Ed Yarbrough Attorney
Spencer Fane Bone McAllester

511 Union Street, Suite 1000 | Nashville, TN 37219
O 615.238.6390
eyarbrough@spencerfane.com | spencerfane.com

From: Phillips, Taylor (USATNM) <Taylor.Phillips@usdoj.gov>
Sent: Friday, July 26, 2024 4:11 PM
To: Longnecker, Joy <Joy.Longnecker@btlaw.com>; Cynthia A. Sherwood <cynthia@sherwoodlitigation.com>; Yarbrough, Ed <EYarbrough@spencerfane.com>; Farmer, Jonathan <jfarmer@spencerfane.com>
Cc: Taddei, John (CRM) <John.Taddei@usdoj.gov>; Ellison, Blake (CRM) <Blake.Ellison@usdoj.gov>; ben@rosefirm.com; David.Bridgers@hklaw.com; Trompeter, Wells (NSH - X68759) <Wells.Trompeter@hklaw.com>
Subject: [EXTERNAL] Robin Smith Phone - Privilege

[Warning] This E-mail came from an External sender. Please do not open links or attachments unless you are sure it is trusted.

All,

As you may already be aware, it appears that there were some communications on Robin Smith's phone that may be covered by the attorney-client privilege—specifically, communications with RoseFirm, PLLC. Accordingly, we have stopped our review of the Cellebrite of Ms. Smith's phone.

Next week, we anticipate being in a position to run terms against a new Cellebrite production of Ms. Smith's phone. In consultation with Ms. Smith's attorneys (cc'd), we anticipate identifying terms likely to identify communications between Ms. Smith and her counsel, and segregating those communications from a production to the prosecution team and the defense.

In the meantime, we ask that you confirm for Ms. Smith's attorneys that you have stopped reviewing Ms. Smith's phone, given that you have been alerted that it contains privileged information.

Thank you,

-Taylor

Taylor J. Phillips | Assistant United States Attorney

United States Attorney's Office for the Middle District of Tennessee

719 Church Street, Ste 3300 | Nashville, Tennessee 37203

Tel (615) 736-2116 | taylor.phillips@usdoj.gov

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